

**Coalition on Illegal Immigration  
Initial Meeting  
Daniel Technology Center Room 220  
October 25, 2007**

**Draft Minutes**

**1. Welcome** - Frank Bossio, Culpeper County Administrator, opened the meeting at 2 p.m.

John Coates, Chairman, Culpeper County Board of Supervisors welcomed all to the meeting and thanked everyone for coming. He said this would be a cooperative effort and working together we would determine the impact upon our communities of this unfair burden which affects our health service, schools, safety and is a financial burden.

**2. Introductions - Attendees: Government** John Coates – Culpeper County; Steve Nixon – Culpeper County; Frank Bossio – Culpeper County; Mary Ann Curtin – Chesterfield County; Kenny Eades – Northumberland County; Randy Wheeler – Spotsylvania County; Michael Johnson – Southampton County; David Ash – Clarke County; Pranas Rimeikis – Town of Culpeper; Lee Clark – Henry County; Dennis Husch – Town of Herndon; Nancy Husch – Town of Herndon; Dave Kirby – Town of Herndon; Larry W. Aylor – Culpeper County; Michael Stone – Dinwiddie County; Kevin Massengill – Dinwiddie; Chris Snider – Town of Culpeper; Chris Yakabowski – Spotsylvania County; Bonnie Johnson – Bath County; Carol Ferguson – Prince William County  
**Other:** Pam and Wayne Steadman – Help Protect Culpeper; Robert Edwards - Culpeper  
**Press:** Donnie Johnston – Free Lance-Star; Hilary Lewis – Culpeper times; Liz Mitchell – Culpeper Star-Exponent; Kiran Krishnamurthy – Richmond Times-Dispatch.

**3. Framing the Organization** - Frank said solutions were not as effective from the top. The Coalition will look at the issues, frame them and present to the legislature. Scope will be that all will participate and one government will take the lead. A number of issues will be chosen and some will be long term and plans will be made to deal with them in the future. The Coalition will be a long term endeavor.

The Scope and Intent will be to put a frame around the issues.

Dave Kirby said we need to name the problem correctly. Immigrants are in the country legally, aliens are not. The definition is on the IRS website and he read it to the group. An immigrant has permission to reside and work in the USA, is eventually issued a green card and LPR status. An illegal alien is one who entered the country illegally or entered legally and lost that status. We are dealing with **illegal aliens**, not illegal immigrants.

Mary Ann Curtin – the legislative representative for Chesterfield County, has been tracking issues in the General Assembly and offered to keep the group informed on legislation. There is a Task Force on State Crime – impact on the Criminal Justice System. There is a Bill to Create a Commission on Immigration. This is executive branch and the plan is to report back in 2009 after a long and thorough look and recommend legislation. Secretary of Health and Human Resources has an Initiative to look at Immigration.

**4. Framing the Issues – Implication and Cost to Citizens** - Dennis Hesch – Town of Herndon – Herndon has spent the last ten years dealing with the problem of illegal aliens in Herndon but the last 3-4 years there has been a significant increase in their impact including day labor sites, overcrowded residences, antisocial behavior and cultural differences. Herndon is 40 miles from DC, our nation's capital and attracts diverse cultures. Immigrants are not a problem and they and their cultural influences are welcome but illegal aliens are a problem because they take advantage of the system. Herndon has had to be creative in dealing with overcrowding with 15-25 men living in one family home. The space is divided into 5 x 8 units and rented for \$3-400 per month to two men. One can be there at a time so the other is out in the community. This causes health problems, illegal use of electricity. Herndon has had no disasters yet.

They have overcrowding enforcement. There are 6000 residences with 120 active overcrowding cases per month. They have had to be very careful with enforcement. They have bulked up building codes. There are extended families in immigrant communities which have greater numbers living together than we are used to but this is their culture and we do not want to restrict them. Herndon is now down to fewer than 40 active cases. There have been some successes. Herndon put pressure on the business community. To conduct a sole proprietor business, legal residence must be proven. Herndon is careful to preclude day labor sites. Good tools are to expand zoning and land use restrictions. Hesch suggests combining experience, modify charters and state code to get more tools.

Herndon had another success – it was the first Town to establish a **memo of understanding** with the Federal government to get police officers **ICE training** under **287G**. The officers started slowly to work their way into the program and only deal with Class Two serious crimes including DUI. They have 25 detainees. They prepare ICE detainer and attach to record. ICE reviews, the detainee goes through the judicial system and is deported. Herndon concludes these people should have no bail, requiring an adjustment to State Code. Mary Ann Curtin reported that this is currently being considered.

Herndon has 6 inspectors to work on houses, vehicles and make a judgment. The property owner is given notice of **overcrowding**. The property owner has a chance to respond – then an ICE notice is given the property owner and an inspection is attempted. Sometimes the problems disappear and sometimes it goes to court and a judge will fine the property owner for contempt. Herndon has had 25 cases go to court within two years. They have a written procedure – a **property maintenance code**. After a third fine the case goes to a civil case.

Frank said 287G can be inconsistent.

Herndon took a conservative approach – scope of 287G very narrow and Herndon has a small police force. They wanted to get more experience. ICE will give you what you want and training is free except for the officers' regular salaries. Herndon uses Fairfax jail.

Mary Ann asked how Herndon approached the business community. Herndon **business licenses to sole proprietors** – the owner has to certify that they have legal right to work in USA.

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Mary Ann said Prince William will ask for authority to ask owners to certify that they will not hire illegal workers.

Herndon asks all their suppliers to certify that all their workers are legal. Only one supplier has not wanted to write the certification.

Steve Nixon – Culpeper County asked Herndon whether their actions on overcrowding have been challenged. Herndon responded No, they have not lost a case that has been prosecuted.

Herndon, Don Kirby – they had \$600,000 homes that were overcrowded. He walked around and saw that residents had to remove picnic tables and children's play equipment. With the rental of one small space to two men, one had to be out while the other used the space. This was a quality of life issue for residents.

Frank Bossio, Culpeper – What was the ownership of these buildings?

Herndon – purposely did not tie overcrowding to immigration. At 140 cases the previous Town Manager used creative ideas – rearranged administrative staff to augment inspectors. These staff members have now returned to administrative work from inspecting for overcrowding in buildings.

Randy Wheeler, Spotsylvania – We have a partial maintenance code. Overcrowding is a serious issue and a challenge to address. The State Code does not support a common sense response. Overcrowding is not necessarily tied to immigration.

Herndon – illegal day labor. Fairfax did a survey on day laborers. They are usually illegal and must stay close to the day labor site. They have no transportation.

Frank Bossio, Culpeper – This would be a good Issue Committee. More effective state legislation would help. It would save creative use of staff and monitoring of conditions. Elected officials might want to review this and the safety factor. It is not necessarily tied to illegal aliens. This would be a good starting issue for the Coalition. Frank asked if there was anything else in housing problems.

Randy Wheeler, Spotsylvania – Issues of overcrowding in residences also cause **overcrowded parking**. Spotsylvania has excessive permanent parking and congested streets – high density with children. This is dangerous.

Mr. Coates, Culpeper – asked Herndon if this is a public nuisance, have you tried that?

Herndon responded – worked very closely with the Chamber of Commerce to craft home based business ordinances. A lot of people have home based businesses using the internet but the ordinance limits the type of business – how much space of the home is used. The number and type of commercial vehicles is limited. A home business can have one ladder truck parked in the driveway. The ordinance has worked very well.

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Frank Bossio– would Herndon take the lead on this issue? Dennis Hesch replied that they would respond after discussion with the Council members.

Frank Bossio then asked if any had experiences with effects on court services or law enforcement.

Carol Ferguson, Prince William County – said Sheriff Prendergraph (see handout news release from US ICE Dept 28, 2007) newly selected as ICE's state and local coordinator, had been deporting for two years. He said he was sworn to uphold the law. He had not been sued. Of 4,200 arrests, 2000 were illegal aliens. These were sent to Atlanta and 97% did not show up. Of those deported 20% returned.

Frank Bossio – no one has found court and law enforcement overstressed?

**Employment** – Carol Ferguson, Prince William County – the 1987 Amnesty included an agreement not to employ illegal aliens. Employers are not to hire illegals. The legislation is here but not enforced. If it were enforced, there would be no problem.

Dennis Hesch – at the ICE office there are 25 people to serve all of Northern Virginia. Of these 25, 12 are working on Terrorism Task Forces. The rest are dealing with deporting cases. They are not dealing with regular employers at all. The set of laws needs to be enforced. Why are they not enforced?

Frank Bossio, Culpeper – what can we do to get this to the Federal level?

Herndon – to stop DUI the police officer must take the offender to Fairfax to a magistrate – a long and time consuming effort. ICE does not really add any time or work and Herndon is a true believer in 287G.

Frank Bossio, Culpeper – we need to ask the sheriffs and police what effects they notice. Herndon is a good example but they have a 287G jail within 20 minutes. The results might not be as good for localities with a more distant 287G jail.

The Department of Labor and Commerce are required to enforce the law of legal employment and they have refused to do so by memo.

Carol, Prince William County – The burden of proof is on the employer and enforced by fines. I do not understand why this cannot be enforced.

Frank Bossio, Culpeper County – This is a legitimate question. Do localities have authority? Does the State?

How does an employer know the workers are legal? There is the regular FICA payment by the employer and SSN numbers are checked.

An ITN number individual tax id number – anyone can get one or an employer number over the phone. If you get an EIN there is no verification required.

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Dennis Husch, Herndon – you can incorporate and not need a business license. Herndon only checks sole proprietorships. No one thing is going to cover it all – you have to keep working at it.

Authority – what can be done on a local level? Laws are on the books that preclude illegals from employment in Virginia – perhaps these can be enforced?

Randy Wheeler – new power at local level - more critical to understand statutes now on the books but not enforced. Why are they not enforced? Legislation on books now would be useful if enforced.

Frank Bossio – let's share information. If we find loopholes – show them to the legislators. Cost is also involved.

Larry W. Aylor, Culpeper – started in Texas in the building industry and now here, very familiar with illegals. They need to be part of the process and legal. We should help them in human need such as life threatening medical emergency. There are two enforcement officers for the whole region and they can only deal with the worst cases such as felonies. The problem needs to be solved locally. People in construction become managers in a multi-layered operation. The bottom level is illegal aliens. The law-abiding company cannot compete because being legal all the way to the bottom, costs more.

Frank Bossio – what extends to local government? What laws will help? What are loopholes in Federal statutes? There are a lot of good laws with a lot of latitude. There is a lack of information.

**Schools** – Frank Bossio, Culpeper – 10% of Culpeper's school population is Hispanic. We don't know if they are illegal or legal. Federal law allows you to ask the question – not take any action but you can ask.

Mrs. Steadman, Help Protect Culpeper – half of her niece's students in North Carolina are illegal. The students are sharing books and desks and computers and there is no more space. There is a lot of anger because of the impact on the average taxpayer.

Frank Bossio – Perhaps we could ask all students – are they legal? Gather the data and make an argument. Can we gather data?

Randy Wheeler, Spotsylvania – checked with US Census Bureau. They do not deal with illegal.

Frank Bossio – we need to discern where the connectivity is and where there are holes.

**Meeting Break** at this point then deal with other issues of hospital, social services, transportation.

Meeting calendar – who would we like to include? We will share documents introduced by Carol Ferguson, Prince William County, either by inclusion with Meeting Minutes or by adding website url. List of attendees will be included.

**Hospital, Medical Care** – Frank Bossio – we do not have data for Culpeper but they can break down numbers. Larry Aylor asked Lee Kirk and costs of illegals to the hospital are a couple of million dollars.

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Mary Ann Curtin, Chesterfield County – hospital bills for the indigent in Chesterfield are \$400,000 and of these patients 60% are illegal aliens.

Pranas Rimeikis, Town of Culpeper – Emergency Services are clearly defined by Federal law. These are not routine services. The estimate was that less than 9,000 were provided statewide at a cost of \$4.5 million.

Mary Ann Curtin, Chesterfield – this report is online under Secretary of Health and Human Resources.

Frank Bossio, Culpeper – it would be good to check with hospitals and match data. This is perhaps not a short term goal for the Coalition.

**Social Services** - Frank Bossio – in Culpeper they do ask for verification of status.

Randy Wheeler, Spotsylvania – activities are confined to those required by Federal law to all, otherwise, status is checked.

Mary Ann Curtin, Chesterfield County – there is an increase in those who do not speak English being served by the Health Department.

Randy Wheeler, Spotsylvania – Free Clinics might be a source for illegals to get medical help.

Larry W. Aylor, Culpeper – In Dallas one hospital has had so many babies born there that it is in jeopardy and is seriously pursuing delinquent patients threatening seizure of property.

Frank Bossio – it would be a good plan to check hospitals, free clinics and health departments for figures.

**Transportation** – a safety issue. Has anyone got problems here or does the State Code cover it?

Lee Clarke, Henry County – this County is on the border of North Carolina and 97% of illegals drive with North Carolina tags Why? Larry Aylor said it was easy to get a license in North Carolina. In Virginia you have to prove legal residence. We have to identify weaknesses and shore up laws.

Frank Bossio – this is a legislative issue. Do we want to change this?

Lee Clarke, Henry County – our locality does not collect taxes or decals yet these drivers are residents.

Randy Wheeler, Spotsylvania – this is an ongoing issue and a large problem – people register their vehicles in other states.

In Virginia, proof of legal residence is required. This is not required everywhere, should it be required in all states?

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This matter should be investigated – Carol Ferguson, Prince William County – if you have a license, you can get a license regardless of whether you are legal.

Mrs. Steadman – watching Virginia current court cases involving illegals, sentences are being suspended and final cases dismissed including 3 to 5 DUI cases.

Frank Bossio – the laws are on the books, new laws will not help and this is getting into the judicial system.

Carol Ferguson – have to leave at this point but want to thank you, Frank for organizing the Coalition.

Herndon - ad hoc day labor – allowed to be on sites, not enforceable on private property but County can decide how land is to be used and beef up zoning. Opening a day labor site is a business and cannot be run. Touch the property owner not the laborers. Issue cease and desist order, then fine until it becomes a criminal case and goes to court. Landowners who object to day laborers on their property can use police or hire security.

Michael Stone, Dinwiddie County – we are not dealing with illegals but with BRAC. Overcrowding. Legitimate legal contractors have booked floors in our two hotels for two years. Dinwiddie wants to be proactive. There is no hospital but a new one in Petersburg is stressed now.

Kevin Massengill, Dinwiddie County – looking at Federal construction plans, 10 to 16 thousand workers will be needed over the next 9 years. Thank you for starting the Coalition. County Administration will have to adjust – highway congestion, schools, crime rate all affect costs and affects all growth.

Mary Ann Curtin , Chesterfield County – VML proposed illegal alien legislation.

Herndon – It was not passed. We squashed this because it needs beefing up

Kevin Massengill – we need the Coalition to be strong and to expand. I have legislative experience including working for Governor Gilmore. It is how you quantify the problem. The issue needs to be defined at a local level. My father was on the committee examining the tragedy and Virginia Tech. We need legislation on mental health. What if an illegal alien lost it at say a football game? Illegals tend not to seek help in the mental health system.

Frank Bossio – we did have a problem in Culpeper with a murder at the end of a soccer game being played by illegal aliens. They are a sequestered population and tend not to address or treat mental health.

Are there any issues unique to your locality? No response.

**Meeting calendar** – Thursday, November 29<sup>th</sup> at 2 o'clock is the tentative time and date of the second meeting of the Coalition. It was requested that the draft minutes, attachments be sent to all. More key elected officials are needed to be involved in the process.

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Randy Wheeler, Spotsylvania – suggest strategy – send back meeting packages and ask each locality for 1 elected and 1 appointed representative, but not more than 2 elected officials from each county, town or city.

Next meeting – set the lead government

Choose some committees which might include:

- Law enforcement
- Local government
- Schools
- State

Many expressed thanks for organization of the Coalition and the meeting adjourned at 5 p.m.

Respectfully submitted,

Deborah C. Hoffman

Culpeper County

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### References:

Mary Ann Curtin - link to the Governor's Commission on Immigration - the meeting page which has all the materials from the first meeting (lots of information there).

<http://www.hhr.virginia.gov/Initiatives/ImmigrationCommission/meetings.cfm>

Carol Ferguson – *The Fiscal Cost of Low Skill Immigrants to State and Local Taxpayers*.

The statement of Robert Rector before the Subcommittee on Immigration of the Committee on the Judiciary of the United States House of Representatives

<http://www.heritage.org/Research/Immigration/tst052107a.cfm>



## **Immigration - Current State Laws**

### **State Legislative Action**

1950 -- Mental health department required to determine the nationality of any person admitted to a state facility and to report to immigration anyone determined to be an alien, §37.2-827 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.2-827>

1950 (last amended in 1994) -- Sheriffs and the department of corrections required to identify criminal aliens in Virginia jails and prisons and report them to the Central Criminal Records Exchange, §53.1-218 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+53.1-218>

1950 (last amended 1982) Clerks of court required to furnish court records to ICE regarding any alien committed to a correctional facility after conviction, §53.1-219 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+53.1-219>

1950 (as amended in 2006 and 2007) Crime to extort money from aliens by withholding immigration documents or threatening to report them to ICE, §18.2-59 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-59>:

1977 -- Crime for employers to knowingly hire illegal aliens (although there is some question now if it is constitutional because of a federal law passed in 1986) §40.1-111 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+40.1-11.1>

1977 - Proof of legal presence required for unemployment compensation benefits, §60.2-617 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+60.2-617>

1985 - Provides for transfer of criminal aliens to federal custody or to be held pending deportation, §53.1-220.1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+53.1-220.1>

1985 (last amended in 1994) - Probation and parole officers required to ask about citizenship status and report to the State Police anyone who fails to produce evidence of citizenship; State Police required to review arrest reports from law enforcement and reports from probation and parole and report to ICE the identity of all convicted offenders suspected of being illegal aliens, §19.2-294.2 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-294.2>

1993 - Aliens (except lawful permanent residents) prohibited from owning, possessing or transporting assault firearms, §18.2-308.2:1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2308.2C01> and dealers prohibited from selling assault firearms to aliens (except lawful permanent residents), §18.2308.2:2, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-308.2C2>

pre-1994 -- Domicile requirements for in-state tuition prohibit illegal aliens from qualifying for in-state tuition at our colleges and universities, §23-7.4 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+23-7.4>

1995- Aliens (except those lawfully admitted to permanent residency) prohibited from obtaining concealed weapons permits, §18.2-308 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-308>

1996 - English the official language of the Commonwealth, §1-511 of the Code of Virginia <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+1-511>

2000 - Gun dealers prohibited from hiring illegal aliens to sell firearms, §18.2-308.2:3 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-308>

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2003 -- Proof of legal presence required to obtain a Virginia drivers' license or a state id card, § 46.2-328.1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+46.2-328.1>

2004 - Persons not lawfully present in the United States prohibited from owning, possessing or transporting any firearm, §18.2-308.2:1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-308.2COI>

2004 - Police officers given authority to arrest without a warrant anyone committing a crime who is an illegal alien previously deported after a felony conviction. § 19.2-81.6 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-81.6>

2004 - Compensation Board required to maintain records re: citizenship of inmates and to encourage local jails to participate in the USDOJ State Criminal Alien Assistance Program, Appropriations Act of 2004.

2005 -- Proof of legal presence required to obtain state benefits including welfare and Medicaid, §63.2-503.1 and §32.1-325.03 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-503.1> and <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+32.1-325.03>

2006 - Juvenile justice intake officers required to report to ICE any juvenile charged with a violent juvenile felony being detained in a secure facility who the intake officer has probable cause to believe is not lawfully present, § 16.1-309.1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+16.1-309.1>

2006- Director of the Department of Juvenile Justice required to coordinate with the Dept of Corrections requests for compensation from the State Criminal Alien Assistance Program for the costs of incarcerating undocumented aliens, § 66.3.2 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+53.1-219>

2006 - Person who threatens to report someone as unlawfully present in order to extort money or pecuniary benefit is guilty of a class 5 felony, §18.2-59iii of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-59>

2006 - Person who falsely identifies himself to a law enforcement officer guilty of a class 1 misdemeanor, § 19.2-82.1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-82.1>

2006 - DMV required to send info it gets on noncitizens to State Board of Elections and State Board directed to remove names from election roles, §24.2-404 and §24.2-410.1 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+24.2-404> and <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+24.2-410.1>

2007 (HB 2923) - Establishes the Commission on the Prevention of Human Trafficking, §30-287 et seq of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-287>

2007 (HB 1673) Establishes the Virginia Commission on Immigration, §2.2-2530 et seq of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-2530>

2007 (HB 1921 and SB 815) - Person who destroys another's passport or other immigration document in order to extort money or pecuniary benefit is guilty of a class 5 felony, §18.2-59iv of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-59>

2007 (SB 1192) - Allows the courts to assess as part of the costs taxed to the defendant the costs of any interpreter appointed for the defendant when the defendant fails to appear for trial and is convicted of a failure to appear and the interpreter appears in the case and no other case on the date the defendant is convicted, § 19.2-164 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-164>

2007 (HB 2261) -- Penalties for residential overcrowding violations increased, §15.2-2286 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2286>

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2007 (SBI412) - Local zoning administrators given broad authority to subpoena birth certificates and other personal documents in order to enforce local housing ordinances, § 15.2-2286 of the Code of Virginia, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2286>

(year of passage unknown) §60.2-214. Agricultural employment.

A. "Employment" includes service performed by an individual in agricultural labor as defined in § 60.2-201 when:

2. Such service is not performed in agricultural labor by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to 8 U.S.C. § 214 (c) and 8 U.S.C. § 101 (a) (15) (H) of the Immigration and Nationality Act. Services performed and wages received by such alien workers after January 1, 1980, shall be counted in determining whether an employer is subject to the Virginia unemployment tax for his other farm workers.

### Prince William Board of County Supervisors

On July 10, 2007, the Prince William BOCS adopted a somewhat weakened version of a resolution offered by Supervisor John Stirrup which called for increased local enforcement of federal immigration law and the imposition of lawful presence requirements on all recipients of county services.

Although County staff earlier reported that there was no statistically valid answer to questions regarding the cost of providing services to undocumented immigrants, <http://www.pwcgov.org/default.aspx?topic=030010000790004064>, and county crime reports showed crime going down as the immigrant population is growing, <http://www.washingtonpost.com/wpdyn/content/article/2007/05/29/AR2007052902342.html>, the Board based its resolution on a "finding" of "economic hardship" and "lawlessness" arising from "illegal immigration."

As introduced, the resolution was said to mandate legal status inquiries at every routine traffic stop and might have led to legal presence requirements at the county's pools, parks and libraries.

[http://www.pwcgov.org/documents/bocs/agendas/2007/071\\_0/1\\_O-E.pdf](http://www.pwcgov.org/documents/bocs/agendas/2007/071_0/1_O-E.pdf),

As amended, the resolution requires:

1. the Prince William County Police Department to enter into a cooperative agreement (an "MOU" or "MOA", also referred to as a 287(g) agreement) with federal immigration authorities to deputize certain PWC officers with "the enforcement powers of federal immigration officers;"
2. Prince William County police officers to inquire into legal status when investigating a "violation of state law or county ordinance" if the officer has "probable cause" to believe the person does not have legal immigration status and the inquiry will not extend the length of the person's detention. The police chief was given 60 days to establish what standards will be used to find "probable cause," what methods will be used to verify legal status, and report back to the Board.
3. the County Executive to provide the Board with a "work session" within 90 days to assist the Board in understanding which benefits the County legally must provide to everyone regardless of legal status (e.g., emergency medical assistance); which benefits the County legally must not provide to anyone except those with a certain legal status (e.g., food stamps); and which benefits the County has discretion to deny based on legal status. At the work session the staff is directed to outline implementation strategies for verifying legal presence where the county has the discretion to deny benefits and to provide information on the cost/benefits of doing so.

The amended version of the resolution dropped a provision allowing citizens to sue the county if they believed the resolution was being violated by a county official, and added language resolving to write a letter to Congress demanding meaningful immigration reform, including border security measures.

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The Puerto Rican Legal Defense and Education Fund, with the assistance of Howrey LLP, is preparing to sue the County asserting that local officials are preempted from actions intended to regulate immigration and making additional constitutional claims.

The Woodbridge Workers Committee and Mexicanos Sin Fronteras have called for a boycott of Prince William businesses, August 27 to Sept. 3, a nonviolent rally on Sept. 2 and a work stoppage on October 9.

## Loudoun County Board of Supervisors

On July 17, 2007, the Loudoun County Board of Supervisors adopted a resolution containing some, but not all, of the provisions contained in the Prince William resolution.

<http://inetdocs.loudoun.gov/bos/docs/businessmeeting/2007/071707packet>

/item23resolutio/item23resolutio. pdf The resolution "strongly encourages" the Loudoun County Sheriff to enter into a cooperative agreement (an "MOD" or "MOA", also referred to as a 287(g) agreement) with federal immigration authorities to deputize certain officers with "the enforcement powers of federal immigration officers."

The resolution directs the County Administrator to provide the Board (at its first business meeting in September) with information to assist the Board in understanding which benefits the County legally must provide to everyone regardless of legal status (e.g., emergency medical assistance); which benefits the County legally must not provide to anyone except those with a certain legal status (e.g., food stamps); and which benefits the County has discretion to deny based on legal status. The administrator was also directed to outline implementation strategies for verifying legal presence where the county has the discretion to deny benefits and to provide information on the merits of doing so.

The Mexican American Legal Defense and Education Fund is looking into possible legal action against the County.

## Culpeper County Board of Supervisors

The Culpeper County Board adopted a resolution unanimously on August 8, 2007 designating English as the County's official language. The action was taken without debate (or any meaningful opportunity for public participation).

<http://www.boarddocs.com/va/ccvalBoard.nsf/Public?OpenFrameSet>

The language of the resolution is very carefully constructed to track the Virginia Code and to avoid running afoul of Title VI of the Civil Rights Act of 1964 (barring discrimination based on ethnicity in federally funded programs; interpreted to include language access in *Lau v. Nichols*) and federal Executive Order 13,166 (access to federally funded services for persons with limited English proficiency).

The County Administrator, however, is describing the resolution publicly as meaning that Culpeper would not "be responsible for providing translations of any sort" and saying that the county will advertise this change in policy in the newspapers.

Culpeper is required by federal law to provide language access in any federally financed program (defined as any program getting \$1 or more in federal aid). This is not a well understood fact of life in Virginia, however, as is documented in the 2004 Joint Legislative Audit and Review Commission report on Acclimation of Virginia's Foreign Born Population, <http://ilarc.state.va.us/tbmaps.htm>

# **CRS Report for Congress**

Received through the CRS Web

## **Unauthorized Employment of Aliens: Basics of Employer Sanctions**

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### **Summary**

The Immigration Reform and Control Act of 1986<sup>1</sup> (IRCA) sought to end unauthorized employment by imposing penalties on employers who knowingly hire or continue to employ aliens not authorized to work in the United States (e.g., illegal aliens and foreign tourists). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996<sup>2</sup> (IIRIRA) amended some of the provisions of IRCA by reducing the number of acceptable documents for completion of the Employment Eligibility Verification form (I-9) purposes, providing employers with the possibility of a good-faith defense against technical paperwork violations and providing some protection for employers who are part of multi-employer associations. This report summarizes the employer sanctions. This report will be updated as events warrant.

### **Background**

Under IRCA, employers in the United States are prohibited from knowingly hiring an alien not authorized to work in the U.S.<sup>3</sup> Three types of conduct are specifically prohibited: (1) hiring, or recruiting or referring for a fee, an alien knowing he or she is unauthorized to work; (2) continuing to employ an alien knowing that he or she has become unauthorized; and (3) hiring any person (citizen or alien) without following the record keeping requirements of the Immigration and Nationality Act of 1952<sup>4</sup> (INA).

<sup>1</sup> P.L. 99-603, 100 Stat. 3359. IRCA amended the Immigration and Nationality Act (codified as amended at 8 D.S.C. §§ 1101 *et. seq.*).

<sup>2</sup> P.L. 104-208, 110 Stat. 3009 (hereinafter IIRIRA).

<sup>3</sup> 8 D.S.C. § 1324a. For employment purposes, a "unauthorized alien" is one who is not at a particular time either: (a) lawfully admitted for permanent residence or (b) authorized to be so employed by law or by the Attorney General. 8 U.S.C. § 1324a(h)(3). Thus, the term covers, e.g., illegal aliens and certain aliens here temporarily whose status does not permit them to work (i.e., tourists).

<sup>4</sup> P.L. 82-414, 66 Stat. 163 (codified as amended at 8 D.S.C. §§ 1101-*et. seq.*)

IRCA also prohibits discrimination on the basis of citizenship status, sets penalties for document abuse and expands national origin discrimination.<sup>5</sup>

## Employment Verification

Section 274(a)(1)(B) of the INA makes it illegal for an employer to hire any person, citizen or alien, without first verifying the person's authorization to work in the United States. Employers (and recruiters and referrers for a fee) must examine documents and attest that they appear to be genuine and relate to the individual. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, the employer may not accept it. Under INA § 274B, employers may not specify which document(s) the person must present. The INA and applicable regulations provide for three categories of documents: (1) those that establish both identity and employment eligibility;<sup>6</sup> (2) those that establish identity only;<sup>7</sup> and (3) those that establish work eligibility only.<sup>8</sup> **IIIRIRA** reduced the number of documents acceptable for 1-9 purposes from those allowed under IRCA.

An employer can terminate an employee who fails to produce the required document(s), or a receipt for a replacement document(s) (in the case of lost, stolen or destroyed documents), within three business days of the date employment begins. However, these practices must be applied uniformly to all employees. If an employee presents a receipt for a replacement document, he or she must produce the actual document(s) within 90 days of the date employment begins.

An employer is liable under the INA for "knowingly" hiring unauthorized aliens, or for continuing to employ such aliens after learning that they are not authorized to work in the United States. The law defines an "unauthorized alien" as an alien who is not either

<sup>5</sup> The anti-discrimination provisions of IRCA apply to employers of four or more employees. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* also prohibits national origin citizenship discrimination but applies only to employers of fifteen or more employees. Thus, only employers of three or fewer employees are not subject to anti-discrimination statutes.

<sup>6</sup> Documents establishing both identity and employment eligibility include a U.S. passport; an alien registration receipt card or permanent resident card, Form 1-551; a foreign passport with a temporary 1-551 stamp; an employment authorization document such as Form 1-766, Form 1-688, Form 1-688A, or Form 1-688B; and in the case of a nonimmigrant alien authorized to work for a specific employer, a foreign passport with the Form 1-94 bearing the same name as the passport and indicating an endorsement of the alien's nonimmigrant status, and the name of the approved employer with whom employment is authorized as long as the period of employment has not expired and the proposed employment is not in conflict with any restrictions on the 1-94.

<sup>7</sup> Under INA § 274A(b)(1)(D), documents establishing identity include a driver's license or identification document issued by a state, federal or local government containing a photo or other identifying information; or for individuals under age 16 in a state that does not issue an appropriate identification document, documentation of personal identity found by the Attorney General to be reliable.

<sup>8</sup> Under INA § 274A(b)(1)(c), acceptable documents in this category include a social security card or other documentation found acceptable by the Attorney General that evidences employment authorization.

a lawful permanent resident or an alien authorized for employment by the INS.<sup>9</sup> The term "knowledge" is construed broadly and includes not only actual knowledge but also "constructive" knowledge (which may fairly be "inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.")<sup>10</sup>

### **Good-Faith Exception**

Under INA § 274A(a)(3), a person or entity that establishes that it has complied in good faith with the requirements of the employment verification obligations has an affirmative defense to a charge that it has violated the provisions.<sup>11</sup> IIRIRA also allows an employer a good faith defense when the employer is found to have made technical or procedural errors in preparing or completing Form I-9.<sup>12</sup> IIRIRA requires that if the employer made a good faith attempt to comply, the government must explain the problem to the employer and allow the employer at least 10 business days to correct it.<sup>13</sup> If the employer fails to correct the error, sanctions may be imposed. Section 274A(b)(6) does not provide the employer with a good faith defense if it has engaged in a pattern or practice of violations of this law.<sup>14</sup>

### **Sanctions**

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) is authorized to conduct investigations to determine whether employers have violated the prohibitions against knowingly employing unauthorized aliens and failing to properly complete, present or retain Employment Eligibility Verification forms (Form I-9) for newly hired individuals. Any person or entity may file a signed complaint alleging a violation of INA § 274(A) with the ICE office having jurisdiction over the business or

<sup>9</sup> 8 V.S.C. § 274A(h)(3).

<sup>10</sup> For example, in *Mester Manufacturing Co. v. INS*, 879 F.2d 561 (9<sup>th</sup> Cir. 1989), an employer was orally notified by the then INS that he had accepted fraudulent documentation from several employees in completion of their I-9's. The employer argued that mere oral representations, even when made by the INS, should not impute knowledge to the employer. The Ninth Circuit rejected this argument and held that once the employer was made aware of the problems with the employee's documentation, the knowledge requirement was satisfied, regardless of how this knowledge was obtained. *See*, 8 CFR § 274a.1(1)(1)(listing situations of constructive knowledge).

<sup>11</sup> *See, U.S. v. Tuttle's Design Build, Inc.*, 2 OCA-HO 270 (8/30/91)(stating that a good faith defense may be raised if the employer shows that (1) an examination of the employee's documents was conducted, in order to establish the individual's identity and employment eligibility; and (2) that the pertinent I-9 form concerning that individual was properly completed). The employer may not argue good faith compliance with the verification requirements if the documents presented are clearly counterfeit, forged, or do not relate to the employee.

<sup>12</sup> Examples of technical errors include (1) a missing date or address on the form or (2) the employee did not make an attestation.

<sup>13</sup> INA § 274A(b)(6).

<sup>14</sup> A pattern or practice violation refers to regular, repeated, and intentional activities. 8 CFR § 274a.1(k).

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residence of the alleged violator. The complaint must contain specific information as to both the complainant and the potential violator and detailed factual allegations including the date, time and place of the alleged violations or conduct alleged to constitute a violation of the act. ICE may conduct an investigation for violations on its own initiative or as a result of having received a complaint. If ICE determines after an investigation that there has been a violation, ICE may issue and serve a Notice of Intent to Fine<sup>15</sup> or a Warning Notice. 16

Employers who fail to properly complete, retain,<sup>17</sup> and/or present Forms 1-9 for inspection as required by law may be subject to a civil penalty for violations ranging from \$110 - \$1,100 per employee whose Form 1-9 is not properly completed, retained, and/or presented.<sup>18</sup> Factors considered in setting the fine level are the size of the business, the employer's good faith, the severity of the violation, and the employer's history.<sup>19</sup> Also, the Attorney General can bring a district court action seeking equitable relief (i.e., permanent injunction, etc.).

For a violation of INA § 274A(a)(1)(A) or (a)(2), an employer can face: (1) \$275-\$2,200 fine for each unauthorized individual;<sup>20</sup> (2) \$2,200 - \$5,500 for each employee if the employer has previously been in violation;<sup>21</sup> (3) \$3,300-\$11,000 for each individual if the employer was subject to more than one cease and desist order.<sup>22</sup>

Under INA § 274A(f), employers convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens or continuing to employ aliens knowing that they are or have become unauthorized to work in the United States, after November

<sup>15</sup> In cases where a notice is issued, employers may request a hearing within 30 days of service of the NIP. Employers may contest the notice before an Administrative Law Judge of the Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review, U.S. Department of Justice. Hearing requests must be in writing and filed with the ICE office designated in the notice. If a hearing is not requested within the 30-day period, ICE will issue a Final Order to cease and desist and to pay a civil money penalty. Once a Final Order is issued, the penalty is unappealable. If a hearing is requested, ICE will file a complaint with OCAHO to begin the administrative hearing process which may end in settlement, dismissal, or a Final Order for civil money penalties.

<sup>16</sup> The Notice must contain a statement of the basis for violations and the statutory provisions alleged to have been violated.

<sup>17</sup> Form 1-9 must be retained by an employer for the later of three years after the date of hire or one year after the individual's employment is terminated. 8 CFR § 274a.2(b)(2).

<sup>18</sup> 8 CFR § 274a.10(b)(2). Pursuant to the Debt Collection Improvement Act of 1996 (P.L. No. 104-134), an adjustment of civil monetary penalties occurs at least once every four years. As such, increases to civil monetary penalties regarding employer sanctions became effective on September 29, 1999.

<sup>19</sup> 8 CFR § 274a.10(b).

<sup>20</sup> 8 CFR § 274a.10(b)(1)(A).

<sup>21</sup> 8 CFR § 274a.10(b)(1)(B).

<sup>22</sup> 8 CFR § 274a.10(b)(1)(C).



6, 1986, (e.g. expiration of work authorization), may be fined up to \$3,000 per unauthorized employee and/or face up to six months of imprisonment.

### **Unfair Employment Practice**

It is an unfair immigration-related employment practice for an employer to discriminate against protected individuals with respect to hiring, recruitment (referral) for a fee, or discharging from employment because of that person's national origin or citizenship status.<sup>23</sup> The term "protected individual" is defined as an individual who is a U.S. citizen or national or an...alien lawfully admitted for permanent residence, a temporary resident under § 21O(a) or § 245A(a)(i), a refugee under § 207, or an asylee under § 208.<sup>24</sup> However, it is not an illegal employment practice, to prefer an American citizen over an alien if both are equally qualified.<sup>25</sup>

Other circumstances allow for legitimate discrimination, such as hiring only U.S. citizens in order to comply with a government contract, or where an agency or department of the federal, state or municipal government so mandates.<sup>26</sup> For example, many public school districts require hiring only U.S. citizens as teachers.

It is also a discriminatory practice to retaliate against an employee who intends to file or has filed a charge or who testified or participated in an investigation or proceeding under this section, or to interfere with an individual's rights under this section.<sup>27</sup>

### **Document Fraud - INA § 274C**

Persons who knowingly use fraudulent identification documents - either identity documents that were issued to persons other than themselves or false attestations for the purpose of satisfying the employment eligibility verification requirements - may be fined and/or imprisoned up to five years.<sup>28</sup> It is unlawful for any person or entity knowingly to engage in any of the following activities:

- Forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of the INA or to obtain a benefit under the INA;

<sup>23</sup> INA § 274B(a).

<sup>24</sup> INA § 274B(a)(3). The term does not cover an alien who fails to apply for naturalization within six months of the date the alien is first eligible to apply or within six months after the date of the enactment of this section or an alien who applied timely but has not been naturalized as a citizen within two years after the date of application unless the alien can establish that he or she is actively pursuing naturalization.

<sup>25</sup> INA § 274B(a)(4).

<sup>26</sup> INA § 274B(a)(2).

<sup>27</sup> INA § 274B(a)(5).

<sup>28</sup> 8 U.S.C. § 1324c(e).

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- Use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered or falsely made document for the purpose of satisfying an INA requirement or to obtain a benefit under the INA;
- Prepare, file, or assist in preparing or filing an application for benefits or any document required under the act with knowledge or reckless disregard of the fact that such applications or document was falsely made.<sup>29</sup>

This provision applies to "any person or entity." As such, it would include attorneys or anyone else who prepares and/or files applications with ICE. Civil penalties for such actions include fines of: (1) \$275 - \$2,200 for each document used, accepted or created and each instance of use, acceptance or creation<sup>30</sup> and (2) \$2,200 - \$5,500 for each document that is the subject of a violation where the person or entity was previously subject to a cease and desist order.<sup>31</sup> Where an entity is composed of physically separate subdivisions responsible for hiring, each such subdivision is considered a separate entity.<sup>32</sup>

In addition, criminal penalties may apply. For example, anyone who fails to disclose or who conceals or covers-up the fact that he or she prepared for a fee an application which was falsely made shall be fined, imprisoned for up to five years or both.<sup>33</sup> Moreover, anyone convicted of failure to disclose the preparation of an application for immigration benefits, who knowingly or willfully prepares or assists in preparing an application for benefits under the INA, whether or not for a fee, shall be fined, imprisoned up to fifteen years or both, and prohibited from preparing or assisting in preparing any other such application.<sup>34</sup>

<sup>29</sup> INA § 274C(a)(5). "Falsely make" is defined as preparing or providing an application or document "with knowledge or reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted," INA § 274C(t).

<sup>30</sup> 8 CFR § 270.3(ii)(A).

<sup>31</sup> 8 CFR § 270.3(ii)(B).

<sup>32</sup> 8 CFR § 270.3(ii)(C).

<sup>33</sup> INA § 274C(e)(1).

<sup>34</sup> INA § 274C(e)(2).